

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

R & R ACQUISITIONS TEXAS L.L.C.,	)	CIVIL NO. CV 08-00348 SPK/KSC
a Texas Limited Liability Corporation,	)	(Contract)
)	
Plaintiff,	)	ORDER DENYING INTERVENOR
	)	MORI GOLF (KAUAI) LLC'S MOTION
vs.	)	TO INTERVENE FILED ON MAY 11,
	)	2009 AND FINDINGS AND
KAUAI RESORT PARTNERS, LLC;	)	RECOMMENDATIONS THAT
TITLE GUARANTY ESCROW	)	INTERVENOR MORI GOLF (KAUAI)
SERVICES, INC.; JOHN DOES 1-50; DOE	)	LLC'S MOTION FOR TEMPORARY
PARTNERSHIPS, CORPORATIONS,	)	RESTRAINING ORDER AND
GOVERNMENTAL UNITS, OR OTHER	)	PRELIMINARY INJUNCTION FILED
ENTITIES 1-50,	)	ON MAY 18, 2009 BE DENIED
)	
Defendants.	)	Hearing: May 26, 2009
	)	Time: 11:00 A.M.
	)	Judge: The Honorable
	)	Kevin S.C. Chang
)	

**ORDER DENYING INTERVENOR MORI GOLF (KAUAI) LLC'S
MOTION TO INTERVENE FILED ON MAY 11, 2009 AND FINDINGS
AND RECOMMENDATIONS THAT INTERVENOR MORI GOLF
(KAUAI) LLC'S MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION FILED ON MAY 18, 2009 BE DENIED**

Intervenor MORI GOLF (KAUAI), LLC's (I) Motion for Temporary Restraining Order and Preliminary Injunction filed on May 18, 2009 and (ii) Motion to Intervene filed on May 11, 2009 (collectively the "Motions") came on for hearing before the Honorable Magistrate Judge Kevin S.C. Chang on May 26, 2009 at 10:56 a.m. Philip R. Brown, Esq. appeared on behalf of Plaintiff R & R ACQUISITIONS TEXAS L.L.C, a Texas Limited Liability Corporation. ("R & R"). Derek Kobayashi, Esq. appeared on behalf of Defendant KAUAI RESORT PARTNERS, LLC ("KRP"). Kevin W. Herring, Esq. appeared on behalf of Defendant TITLE GUARANTY ESCROW SERVICES, INC. ("TG"). Michael Marsh, Esq. and Lauren Sharkey, Esq. appeared on behalf of Intervenor MORI GOLF (KAUAI), LLC ("MORI").

The Court having reviewed the written submissions of the parties, having heard the argument of counsel, issues the following findings and recommendations:

With regards to the motion to intervene, the complaint in this civil action was filed in July 2008. A stipulated judgment was entered in January of 2009. The Court finds, first, that it would be unduly prejudicial to the Plaintiff and the Defendant, in this case, to allow MORI to intervene at this late date. Mori has failed to provide adequate, sufficient explanation as to why the restraining order or the motion to intervene was delayed in being filed. From the record, it does appear that MORI was aware of or should have been aware of no later than April 2009 given the disclosure of garnishment which was served or conveyed by TG in this case. So the Court finds simply that this motion to intervene is not timely and on that basis this motion to intervene is denied.

With regards to the motion or application for temporary restraining order, the Court does find and recommend that this motion be denied; the Court specifically finding that MORI has failed to sustain its burden of proof in this case. MORI has failed to make the strong showing of likelihood of success on the merits. MORI has failed to show that it would suffer irreparable harm if the temporary restraining order or the extraordinary relief sought was not entered. The balance of hardships in this case does not, based on the record, tip sharply in favor of MORI. As noted, monetary damages or monetary injuries are generally not considered to be irreparable harm. And so, while as Mr. Marsh states, filing a separate lawsuit would be burdensome and inconvenient it nevertheless is not sufficient to tip the balance of hardships in this case sharply in MORI's favor. And, therefore, based on those findings the Court will recommend that the Motion for Temporary Restraining Order and Preliminary Injunction be DENIED.

DATED: Honolulu, Hawaii, June 29, 2009.



APPROVED AS TO FORM:

/s/ Derek Kobayashi

DEREK KOBAYASHI
DOUGLAS CODIGA

Attorneys for Defendant
KAUAI RESORT PARTNERS, LLC

A handwritten signature in black ink that appears to read "KSC".

Kevin S.C. Chang
United States Magistrate Judge

/s/ Kevin W. Herring

KEVIN W. HERRING

Attorney for Defendant
TITLE GUARANTY ESCROW
SERVICES, INC.

/s/ Lauren Sharkey

MICHAEL MARSH
LAUREN SHARKEY

Attorneys for Intervenor
MORI GOLF (KAUAI), LLC

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII;
R & R Acquisitions, L.L.C., et al. v. Kauai Resort Partners, LLC, et al., et al.,
Civil No. CV 08-00348 SPK KSC; ORDER DENYING INTERVENOR MORI GOLF
(KAUAI) LLC'S MOTION TO INTERVENE FILED ON MAY 11, 2009 AND FINDINGS
AND RECOMMENDATIONS THAT INTERVENOR MORI GOLF (KAUAI) LLC'S
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION FILED ON MAY 18, 2009 BE DENIED